

**\*\* E-filed July 13, 2011 \*\***

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

RICHARD LANE,

No. CV-10-5779 HRL

Plaintiff,

**ORDER DENYING PLAINTIFF'S  
REQUEST TO FILE A MOTION UNDER  
FRCP 60(b).**

v.

**[Re: Docket No. 32]**

ANNE STAUSBOLL, CEO and ROB  
FECKNER, PRESIDENT of the BOARD OF  
ADMINISTRATION of the CALIFORNIA  
PUBLIC EMPLOYEES' RETIREMENT  
SYSTEM (CalPERS),

Defendants.

In an earlier state court action, plaintiff Richard Lane ("Lane") sued California Public Employee Retirement System ("CalPERS") in a dispute over the calculation of his pension benefits. Lane lost in the trial court, failed to get a reversal on appeal and ultimately was unsuccessful with his petition for review to the California Supreme Court. Lane then sued in this court, naming as defendants the CEO of CalPERS and the President of its Board of Administration. This court ultimately granted defendants' motion to dismiss on the basis of res judicata and entered judgment for them on April 28, 2011.

On May 18, 2011 Lane filed a Notice of Appeal and the matter is now pending before the Ninth Circuit Court of Appeal. See Defendants Request for Judicial Notice, Exh. B.<sup>1</sup> Now

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<sup>1</sup>Coincidentally, also on May 18, 2011, Lane filed a Chapter 13 petition for bankruptcy.

1 before this court is a motion which plaintiff has styled “Motion for Relief From Judgment  
2 Pursuant to FRCP60(b)(3) & (6)”.

3 Preliminarily, the court notes that Lane’s motion is procedurally incorrect. In the Ninth  
4 Circuit, a district court loses jurisdiction to reconsider a final judgment under Federal Rule of  
5 Civil Procedure 60(b) when an appeal has been taken. Long v. Bureau of Economic Analysis,  
6 646 F.2d 1310, 1318 (9th Cir. 1981), vacated on other grounds, 454 U.S. 934 (1981). The  
7 correct procedure for the aggrieved litigant is to request this court to signify its willingness to  
8 entertain a motion for reconsideration, and if the court were to agree - to then move the Ninth  
9 Circuit to remand the case, thus restoring jurisdiction to the district court. See id. However,  
10 rather than elevate form over substance, this court will deem the present motion to be a request  
11 to consider a motion for reconsideration.

12 Having considered the plaintiff’s request, it is denied. Lane argues vehemently, and no  
13 doubt sincerely, that the California Government Code as well as California wage and hour  
14 regulations required CalPERS to calculate his pension as he contends. Nevertheless his  
15 arguments are ones he either did make or could have made in the state court action and he  
16 cannot turn this court into a court of last resort to overturn the outcome of his state court action.  
17 Moreover, Lane has presented nothing to support his contention that this court’s final judgment  
18 was procured by fraud nor has he shown that any extenuating circumstances justify the relief he  
19 requests.<sup>2</sup> See FED. R. CIV. P. 60(b) (a court may relieve a party from a final judgment if  
20 procured by “fraud” or for “any other reason that justifies relief”).

21 Since this court would not grant a motion for reconsideration, there is no benefit to  
22 plaintiff in granting his request for leave to bring one.

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26 <sup>2</sup> Also, although not a basis for this court’s decision, it is likely that Lane’s claim for  
27 additional pension benefits passed to his Chapter 13 trustee. Unless he has secured  
28 permission from the trustee, it is the trustee - and not Lane - who would have the right pursue  
this action further. Estate of Thelma v. Spiritos, 443 F.3d 1172, 1174 (9th Cir. 2006) (“the  
bankruptcy code endows the bankruptcy trustee with exclusive right to sue on behalf of  
estate....”) (citing 11 U.S.C. § 323).

1 SO ORDERED.

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3 Dated: July 13, 2011

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5 HOWARD R. LLOYD  
6 UNITED STATES MAGISTRATE JUDGE  
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**C10-05779 HRL Notice will be electronically mailed to:**

D. Gregory Valenza gvalenza@shawvalenza.com, cangel@shawvalenza.com

**Notice will be provided by other means to:**

Richard R. Lane  
1266 Sandia Avenue  
Sunnyvale, CA 94089

**Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.**